



STATE BOARD OF EQUALIZATION

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August 17, 1989

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James Wisner, Esq.
Bancroft, Avery & McAlister
601 Montgomery Street
Suite 900
San Francisco, CA 94111

Re: Request for Real Property Tax Ruling
Concerning Conveyance Out of Holding Agreement

Dear Mr. Wisner:

This is in response to your letter of July 27, 1989 to Mr. Richard Ochsner requesting our opinion that the conveyance out of a holding agreement will not constitute a "change in ownership" as defined in Revenue and Taxation Code section 60 under the facts described below.

FACTS

On December 23, 1975, your clients, trustees of an irrevocable trust, purchased a parcel of property in Nicasio. This property is Assessor's Parcel 121-070-27. The trustees, as purchasers, provided all consideration, fees and costs of the purchase. As part of the close, the trustees entered into a holding agreement with the Transamerica Title Insurance Company ("Transamerica") "thus taking into the [t]rustees the entire present interest and right to beneficial use." For convenience, the trustees then had the property deeded directly to Transamerica as there was no reason for the trustees to take title first. Although it received its interest directly, Transamerica was at all times subject to the terms of the holding agreement and the control of the trustees just as if the conveyance had been made from the trustees.

The holding agreement is in standard form. As such, it provides that Transamerica shall merely hold record title. All beneficial use, enjoyment, control and responsibility remained in the trustees.

Since the purchase in 1975 to the present, the trustees have carried out construction upon the property. They have had exclusive control of the property and they have taken full responsibility for it, making all decisions, paying all taxes.

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and insurance and otherwise exercising exclusive ownership rights. Transamerica has been completely passive as it is without power to act.

Now, due to increased costs of maintaining historical records, Transamerica is pursuing a policy of terminating its holding agreements. Accordingly, it has prepared and executed a quitclaim deed in favor of the trustees.

LAW AND ANALYSIS

Revenue and Taxation Code section 60 defines "change in ownership" as "a transfer of a present interest in real property, including the beneficial use thereof, the value of which is substantially equal to the value of the fee interest."

Board Rule 462(K)(3) implements section 60 with particular reference to holding agreements as follows:

Holding agreements. A holding agreement is an agreement between an owner of the property, hereafter called a principal, and another entity, usually a title company, that the principal will convey property to the other entity merely for the purposes of holding title. The entity receiving title can have no discretionary duties but must act only on explicit instructions of the principal. The transfer of property to the holder of title pursuant to a holding agreement is not a change in ownership. There shall be no change in ownership when the entity holding title pursuant to a holding agreement conveys the property back to the principal.

(A) There shall be a change in ownership for property subject to a holding agreement when there is a change of principals.

(B) There shall be a change in ownership of property subject to a holding agreement if the property is conveyed by the holder of title to a person or entity other than the principal.

Although Rule 462(K)(3) contemplates a holding agreement which is created by a transfer of title from a principal, the rule makes it clear that a transfer from the entity holding title pursuant to the holding agreement to the principal is not a change in ownership. The rationale for this conclusion is that the beneficial use of the property remains in the principal and thus is not included in the transfer of legal title to the principal. The fact that title was not originally transferred to Transamerica by the principals would not alter that

conclusion in our opinion, as long as the beneficial or equitable interest in the property remained in the principals and not Transamerica as appears to be the case here.

In the similar case of Parkmerced Co. v. City and County of San Francisco (1983) 149 Cal.App.3d 1091, the plaintiff was a partnership which was formed for the purpose of acquiring and operating specified real property. The general partners were two corporations. The partnership agreement provided that title to the property would be held by one of the corporations as nominee for the partnership. The corporation holding title was subsequently merged into another corporation both of which were wholly owned by the same person. The latter corporation, as successor by merger to the real property later conveyed the property to the partnership. The court held that no change in ownership occurs "upon the transfer of 'bare legal title' without a corresponding transfer of 'the beneficial use thereof,'" and that since the nominee corporation and its successor held no more than "bare legal title" to the property, the transfer to the partnership was not a change in ownership.

The court stated at page 1095:

" . . . Today it is not all uncommon for individuals, or corporations such as title companies, to hold 'bare legal title' to property for the owner of its beneficial interest. Such a transaction is of the nature of a resulting trust 'which arises from a transfer of property under circumstances showing that the transferee was not intended to take the beneficial interest,' and the transferee has no duty other than to deliver the property to the person entitled thereto, upon demand. [Citation omitted.] And such a transfer, when made, will be of the property's 'bare legal title' to the person already entitled to its beneficial use."

From the facts described above, it appears that Transamerica never held any equitable or beneficial interest in the subject real property but only legal title thereto. Accordingly, the transfer of the title to the real property to the trustees by Transamerica did not include any equitable or beneficial interest in the property and therefore did not constitute a change in ownership for property tax purposes.

The views expressed in this letter are, of course, advisory only and are not binding upon the assessor of any county. You may wish to consult with the Marin County Assessor in order to confirm that the described property will be assessed in a manner consistent with the conclusion stated above.

James Wisner

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Our intention is to provide timely, courteous and helpful responses to inquiries such as yours. Suggestions that help us to accomplish this goal are appreciated.

Very truly yours,

A handwritten signature in cursive script, reading "Eric F. Eisenlauer".

Eric F. Eisenlauer
Tax Counsel

EFE:cb
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cc: Hon. James J. Dal Bon
Marin County Assessor
Mr. John W. Hagerty
Mr. Verne Walton